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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,457	12/15/2003	Erik J. van der Burg	014139US1	3098
38107 7590 07/21/2011 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P. O. Box 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
BATES, DAVID W				
ART UNIT		PAPER NUMBER		
3775				
NOTIFICATION DATE		DELIVERY MODE		
07/21/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/736,457

Applicant(s)

VAN DER BURG ET AL.

Examiner

DAVID BATES

Art Unit

3775

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 27-32 and 46-63.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Thomas C. Barrett/
Supervisory Patent Examiner, Art Unit 3775

/D. B./
Examiner, Art Unit 3775

Continuation of 11, does NOT place the application in condition for allowance because: Regarding claims 27-32 and 46-63, Applicant's arguments have been reviewed and respectfully found not persuasive.

First, regarding claims 27, 46 and 50, Applicant argues that the Hicklin device is not "implantable". Initially, it is pointed out that the term "implantable" limits the claim only so far as to make a device capable of being placed in a body. Further, the only mention of implantability in the claim is to refer to the device as an implant with an "implant body" as a component of a device. All other intended uses of the device refer to "attachment", not "implantation". Applicant is reading more into the limitation of "implant body" in his arguments than is required by the claim. For instance, only the implant body is required to be implanted, as claimed.

Regarding claims 27, 46 and 50, Applicant presents that Hicklin is not implantable since the handles of the device would project beyond the skin of the patient. This argument is apparently based, essentially, on the size of the Hicklin device relative to a patient. This is not found persuasive since the size of the Hicklin device is not known (drawings are not indicated as being to scale, specification only states the size can be varied relative to the desired function, etc.). Additionally, the size of a hyoid bone and the size of the patient are not known.

Second, regarding claims 27, 46 and 50, Applicant presents that the Hicklin device is for "gripping about" two objects, and is therefore not structured to be attached to anything. Initially, gripping is considered to be one form of attaching which reads on the claim. However, it appears that the attachment being argued about is an expansion, based on the specification and figures (but not required in the claim). It is unclear that the Hicklin device is not capable of expanding to attach to an object (unthreading the screw will positively force the arms apart until the device is wedged against {attached to} the target structure).

Third, regarding claims 27, 46 and 50, Applicant argues that the third arm of Hicklin was disregarded. However, the claim language of at least claim 27 has left open to interpretation that there can be more than two attachment zones - the term "comprising" in the claim is interpreted to mean that additional components, not claimed, can exist on the device. Additionally, inclusion of such an arm will not necessarily make the device unsuitable for use on a hyoid bone. Hypothetically, a patient with a large hyoid bone can exist (non human patient, for example) which has an anatomical structure which would allow for implantation of the Hicklin device.

Regarding claims 28-32, Applicant argues that the connection at the "rigid pin" is not flexible. However, the body is considered to flex about the pin (the movement of the two components is considered "flexing").